

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11	WILLIE RICHARDSON, III,)	No. C 04-2712 RMW (PR)
12	Petitioner,)	
13	vs.)	ORDER GRANTING MOTION TO
14	BEN CURRY, Warden,)	LIFT STAY; DISMISSING
15	Respondent.)	UNEXHAUSTED CLAIMS;
)	ORDER TO SHOW CAUSE

Petitioner, a California prisoner proceeding pro se, filed a second amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On March 31, 2008, the court granted respondent's motion to dismiss for failure to exhaust and directed the petitioner to elect how he would like to proceed. On August 12, 2008, the court granted petitioner's request to stay the proceedings and held petitioner's second amended petition in abeyance pending exhaustion of his claims in the state supreme court. In that order, the court ordered petitioner to file another amended petition containing his fully exhausted claims as well as a motion to lift the stay within thirty days of the California Supreme Court's decision.

On September 6, 2013, and November 26, 2013, petitioner filed a request to lift the stay. However, petitioner did not file an amended petition as directed by the court in 2008. Moreover, petitioner stated that his state habeas petition, filed in the California Supreme Court on July 30, 2008, was denied on January 21, 2009. Petitioner offers no explanation as to why he has waited

1 almost five years after the California Supreme Court denied his petition to return to federal court.
2 In the court's August 12, 2008 order granting petitioner's motion to stay, the court informed
3 petitioner that if petitioner wished to have the court consider any of his then unexhausted claims,
4 "he must properly present those claims to the California Supreme Court within thirty days . . .
5 [and] within thirty days of the California Supreme Court's decision, he must file an amended
6 petition in this Court setting forth his newly exhausted claims in addition to any previously
7 exhausted claims he still wishes to have this Court consider." (Emphasis added.) Petitioner has
8 not done so. Accordingly, the court will dismiss the unexhausted claims, and proceed only with
9 the exhausted claims, as presented in petitioner's second amended petition.

10 As grounds for federal habeas relief, petitioner's surviving claims are: (1) he was denied
11 his due process right to fundamental fairness in that his current crimes of conviction rest upon
12 the incredibly insubstantial uncorroborated testimony of accomplice Niyah Edwards thereby
13 rendering the state court's rejection of such claim objectively unreasonable, and (2) there was
14 insufficient evidence to support some of his convictions, thereby rendering the state court's
15 rejection of such claim objectively unreasonable. The court will require respondent to show
16 cause why these claims in petitioner's second amended petition should not be granted.

17 CONCLUSION

18 1. Petitioner's motion to lift the stay is GRANTED. The clerk shall RE-OPEN this
19 action.

20 2. Respondent shall file with the court and serve on petitioner, within **sixty days** of
21 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing
22 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
23 Respondent shall file with the answer and serve on petitioner a copy of all portions of the
24 underlying state criminal record that have been transcribed previously and that are relevant to a
25 determination of the issues presented by the petition.

26 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
27 court and serving it on respondent within **thirty days** of the date the answer is filed.

1 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
2 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section
3 2254 Cases within **sixty days** of the date this order is filed. If respondent files such a motion,
4 petitioner shall file with the court and serve on respondent an opposition or statement of non-
5 opposition within **twenty-eight days** of the date the motion is filed, and respondent **shall** file
6 with the court and serve on petitioner a reply within **fourteen days** of the date any opposition is
7 filed.

8 4. It is petitioner's responsibility to prosecute this case. Petitioner is reminded that
9 all communications with the court must be served on respondent by mailing a true copy of the
10 document to respondent's counsel. Petitioner must keep the court and all parties informed of any
11 change of address by filing a separate paper captioned "Notice of Change of Address." He must
12 comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal
13 of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

14 IT IS SO ORDERED.

15 DATED: 1 0 8 1


RONALD M. WHYTE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

RICHARDSON,

Plaintiff,

v.

CURRY,

Defendant.

Case Number: CV04-02712 RMW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 8, 2014, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Willie Richardson T-03382
5-N-34
C.S.P. San Quentin
San Quentin, CA 94974

Dated: April 8, 2014

Richard W. Wieking, Clerk
By: Jackie Lynn Garcia, Deputy Clerk